IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.Nos.625 of 2000

Roytex rep by its
Sole Proprietor,
V.C.Ramasamy
S/o.Shri.Chidambaram,
Aged about 45 years,
61/2, Selvam Nagar,
Coimbatore 41. .. Appellant/Complainant

Vs.

Pushpa Govindan .. Respondent/Accused No.2

Prayer: This appeal has been preferred under Section 378 of Crl.P.C. against Judgment of acquittal dated 17.05.2000, in STC.Nos.3496 of 1996 respectively, on the file of the Judicial Magistrate No.V, Coimbatore.

For Appellant : Mr.V.Sairam

For Respondent : Mr.S.Silambanan

JUDGMENT

The complainant in STC.No.3496 of 1996 on the file of the learned Judicial Magistrate No.V, Coimbatore, is the appellant herein. This appeal has been preferred only against A2-Pushpa Govindan. A2 is a partner of Sree Mookambikai Fabrics, (A1), having office at 75, Lingappa Chettiar Lane No.2, Combatore. Another partner of Sree Mookambikai Fabrics is A3-C.Karthikeyan, who has been discharged by an order in C.M.P.No.1919/1997 by the trial Court. The complainant is Roy Tex represented by its sole proprietor V.C.Ramasamy.

2. The facts in the private complainant are as follows:-

The complainant supplied cotton yarn to the accused on credit basis. Initially a sum of Rs.17,18,416/- was due to the

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complainant. Out of the said amount the accused have discharged a sum of Rs.10,17,000/- leaving a balance of Rs.6,87,418/-. For the discharge of the above said balance amount the accused had drawn two cheques one for Rs.2,14,584/- and another for Rs.1,00,000/-. When both the cheques were presented in State Bank of India, City Branch, on 12.09.1996 both were dishonoured on the ground that there is no sufficient funds in the account of the drawer of the cheques. When the cheques were presented once again on 18.09.1996 they met with the same fate. Hence, the complaint.

3 The private complaint was taken on file by the learned Judicial magistrate No.V, Coimbatore, for an offence under Section 138 of the Negotiable Instrument Act, and on appearance of the accused on summon, copies under section207 of Cr.P.C., were furnished to the accused and when the offence was explained to the accused, he pleaded not guilty. On the side of the complainant, the complainant was examined as P.W.1 and an officer of the State Bank of India was examined as P.W.2. Ex.P.1 to Ex.P.13 were marked on the side of the complainant.

4. P.W.1 in his evidence would depose that he is a dealer in yarn and the first accused is a partnership firm and A2 and A3 are its partners and they are incharge of the administration of the business and that they have purchased yarn from the complainant to the value of Rs.17,87,416/- under invoice Ex.P.1(series six in number) and toward partial discharge of the amount due to the complainant the accused had issued a cheque for Rs.11,34,618/- and when the cheque was bounced on presentation and the said fact was informed to the accused, the accused inturn issued another cheque of Rs.10,17,000/- and the said cheque was encashed by the complainant. The accused owe a sum of Rs.6,87,418/- to the complainant in connection with the purchase of yarn from the complainant. The accused gave three cheques dated 15.3.1996 drawn on the State Bank of India for Rs.2,16,584/-. Ex.P.2 is the said cheque, which on presentation in Indian Bank, R.S.Puram Branch, was returned for want of funds. Ex.P.3 is the memo issued by the Bank relating to Ex.P.2-cheque. Another cheque for Rs1,00,000/- dated 15.9.1996, presented on 17.9.1996 in Indian Bank, R.S.Puram branch, but the said cheque also met with the same fate. Ex.P.4 is the cheque for Rs.1,00,000/-. Ex.P.5 is the memo issued by the bank in respect of Ex.P.4-cheque. The cheques were given with the knowledge of A2. A lawyer's notice was given to the accused on 18.9.1996 and the office copy of the notice is Ex.P.6. But A2 did not receive the notice, whereas A1 had received the notice. The acknowledgment card is Ex.P.7. Ex.P.9 is the letter sent to the accused and unserved postal envelop is Ex.P.8. The reply sent by A1 is Ex.P.10. After filing of the private complaint A1 had sent Ex.P.11-letter admitting his liability and also paid Rs.50,000/- in two instalments. Ex.P.12 is the statement of accounts. Ex.P.12 is the statement of accounts.

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Ex.P.13 is the letter of delivery in respect of A3.

5. P.W.2, an officer of the State Bank of India, would depose to the fact that the accused are having an account with the State Bank of India, and the cheque filed in this case was presented to the bank on 12.09.1996 and it bounced.

6. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C, the accused denied their complicity with the crime. On behalf of the accused D.W.1 was examined and Ex.D.1 to D.3 were marked.

7. After going through the available evidence before the trial Court, the learned trial Judge has held that the offence under Section 138 of the Negotiable Instrument Act, has been proved against A1 and accordingly convicted and sentenced A1 to pay a find of Rs.5,000/- and A2 was found not guilty under Section 138 and A2 was acquitted under section 255(1) of Cr.P.C. Aggrieved by the findings against A2 of the trial judge, the complainant has filed this appeal.

8. Now the point for determination in this appeal is whether the findings of the learned trial judge against A2 is perverse to warrant any interference from this Court?

9.The Point:- The learned counsel for the appellant basing his argument on the fact that A1 and A2 are the partners of Sri Mookambikai Fabrics, Coimbatore, and as per section 141 of the Negotiable Instrument Act, A2 is also liable under Section 138 of the Negotiable instrument Act for bouncing of Ex.P.2 and Ex.P.4 cheques, since as one of the partners of Sri Mookambikai Fabrics, A2 is also responsible to the conduct of the business of the company and shall be deemed to be guilty of the offence, but the learned trial judge without considering this, has acquitted A2. As per Section 141(2) of Negotiable Instrument Act, even any director, Manager or Secretary or other officers of the compamy are also liable for the offence under Section 138 of the provided that the offence is proved to be committed with the consent or connivance of them. So burden is heavily on the complainant to prove that only with the consent or connivance or knowledge of A2 the above mentioned cheques viz. Ex.P.2 and Ex.P.4 were drawn by A1 in favour of the complainant. Admittedly in Ex.P.2 and P.4, A1 alone has signed. When incriminating circumstances were put to A2 she had denied all the incriminating circumstances put to her. It is pertinent to note in this case that the notice for A2 has been issued not to No75, Lingappa Chettiar lane No.2, Coimbatore, where Sri Mookambikai Fabrics is situated whereas the notice for A2 was sent to No.103, Raja Annamalai Puram Road, Saibaba colony, as seen from Ex.P.8. When this was put to P.W.1 in cross-examination, P.W.1

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would say that since A2 is not well and taking treatment at her house at No.103, Raja Annamalai Puram Road, Saibaba colony, the notice was sent to her house address. But this explanation cannot be accepted because it is the case of the complainant that as one of the partners of Sri Mookambikai Fabrics, she(A2) is responsible for the bouncing of Ex.P.2 and Ex.P.4-cheques. Under such circumstances, it is the duty of the complainant to issue the legal notice only to the companies address viz. 75, Lingappa Chettiar Lane No.2, Coimbatore, where A1 was present and it was delivered to A1 under Ex.P.7-acknowledgement. So there was no opportunity given to A2 to explain in what way she(A2) is connected or unconnected with cheques Ex.P.2 and P.4, which were bounced on presentation. It is pertinent to note in this case under Ex.P.11 that A1 has admitted his liability and it is also in evidence that after filing of this private complaint a sum of Rs.50,000/- has been paid to the complainant in two instalments. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial judge that A2-Pusha Govindan is not responsible for the bouncing of Ex.P.2 and Ex.P.4 cheques to warrant conviction under Section 138 of the Negotiable Instrument Act. Point is answered accordingly.

10.In the result, this appeal is dismissed confirming the judgment in STC.Nos.3496 of 1996, on the file of the Judicial Magistrate No.V, Coimbatore.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,

1.The Judicial Magistrate No.V, Coimbatore.

2.The Chief Judicial Magistrate, Coimbatore.

1 cc to Mr.S. Silambanan, Advocate, Sr. 18854

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